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Judge Timothy Dore
Chapter 13

8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON

10 In re) Chapter 13
11)
12 JAN MATHIESON,) Case No.: 17-12265
13 Debtor.)
14) Adversary No.
15 JAN MATHIESON,)
16 Plaintiff:) COMPLAINT FOR INJUNCTIVE
17 vs.) RELIEF, REINSTATEMENT OF
18 PHH MORTGAGE CORPORATION,) AUTOMATIC STAY AND
19 corporations; OCWEN LOAN) DETERMINATION OF AMOUNT OF
20 SERVICING LLC, a corporation;) CLAIM
21 and WESTERN PROGRESSIVE -)
22 WASHINGTON INC., a corporation.)
23 Defendants.)
24)
25)
26)
27)
28)
29)

The Debtor/Plaintiff, by and through her attorney, Joy Lee Barnhart, files this Complaint asking the Court to enter an injunction against the foreclosure sale by PHH Mortgage COMPLAINT FOR INJUNCTIVE RELIEF, REINSTATEMENT OF AUTOMATIC STAY AND DETERMINATION OF AMOUNT OF CLAIM

1 Corporation pending on her residence for November 15, 2019,
2 reinstate the Automatic Stay as to PHH Mortgage Corporation and
3 Ocwen Loan Servicing and to determine the delinquency amount
4 owed on real property known as 476 Bronson Way NE, Renton,
5 Washington 98056 and in support thereof represents and pleads as
6 follows:

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8 I. JURISDICTION AND VENUE

9 1.1 Plaintiff Jan Mathieson is the Debtor in this action.
10

11 1.2 PHH Mortgage Corporation (PHH hereinafter) is the
12 entity named as holding the Note and Deed of Trust to the
13 Plaintiff residence, at 476 Bronson Way NE, Renton, Washington
14 98056, in the Notice of Trustee Sale. PHH Mortgage Corporation
15 is a wholly owned subsidiary of Ocwen Loan Servicing.

16

17 1.3 Ocwen Loan Servicing (Ocwen hereinafter) is a
18 corporation which held the Note and Deed of Trust to the
19 Plaintiff residence, at 476 Bronson Way NE, Renton, Washington
20 98056 at the time of the filing of this case. Ocwen obtained
21 Relief from Stay on February 1, 2019 and purportedly transferred
22 the Note and Deed of Trust to its subsidiary on July 11, 2017.

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24 1.4 Western Progressive - Washington Inc. (Western
25 hereinafter) is acting as the foreclosing Trustee. However,

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1 Western Progressive - Washington Inc., although registered as a
2 Washington Corporation, has no officers who are residents of the
3 State of Washington. In fact, three of its officers list their
4 as their address as a location in Luxembourg. The address
5 provided to the Secretary of State as the principal offices of
6 the company is 1000 Abernathy Road, Suite 200, Atlanta, GA
7 30326. This means that Defendant, Western is not compliant with
8 the requirements of the Washington Deed of Trust Act RCW
9 61.24.010(2) to allow it to conduct foreclosure sales in the
10 State of Washington.

13 1.5 This Court has jurisdiction over the subject matter as
14 an adversary proceeding under 28 USC Section 157(b).

16 1.6 Pursuant to Federal Rule of Bankruptcy Procedure
17 7008(a), Plaintiff consents to the entry of final judgment in
18 this proceeding by the bankruptcy court.

II. PARTIES

22 2.1 Plaintiff reasserts paragraphs 1.1 through 1.6 by
23 reference.

24 2.2 Plaintiff petitioned this Court for relief Under
25 Chapter 13 of the Bankruptcy Court on May 17, 2017.

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2.3 Plaintiff may serve the defendants by mailing a copy of the Summons and Complaint to the parties at the addresses set forth in attachment A which constitute the addresses of their regular place of business and an Officer of the Corporation.

III. FACTS

3.1 In May 2011, the Plaintiff granted a deed of trust against her residence at 476 Bronson Way, NE, Renton, Washington 98056 to Ally Bank Corp. formerly known as GMAC Bank to secure a loan in the amount of \$209,575.

3.2 This Note and Deed of Trust was subsequently transferred to Ocwen. On or about July 11, 2017 Ocwen transferred the Note and Deed of Trust to its subsidiary PHH.

3.3 Shortly prior to filing this bankruptcy proceeding, the Plaintiff was approved for a trial loan modification reducing her monthly mortgage payments. At the time the Plaintiff applied for the loan modifications she was current on her payments on the mortgage.

3.4 From May 2017 to June 2018 the Plaintiff made payments to Ocwen in the amount stated as owing on the statements shown on Ocwen's website. When she attempted to make the payment in

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1 June 2018 she was told that the loan modification had been
2 cancelled in January 2018 for failure to sign and return the
3 final paperwork.
4

5 3.5 Plaintiff never received this final paperwork from
6 Ocwen. Nor was she informed of the cancellation prior to June
7 2018. Plaintiff had made timely payments based on the amount
8 shown on the statements on the Ocwen website. When she returned
9 to the Ocwen website to download copies of those statements, the
10 statements for February, March and April 2018 were missing from
11 the website.
12

13 3.6 Plaintiff was told by the agent who informed her of
14 the cancellation that she could 'catch up' the difference between
15 what she paid under the loan modification and the full payment
16 over time as she could it manage it.
17

18 3.7 Plaintiff made timely payments to Ocwen based on its
19 statements, which have been inconsistent and contradictory, in
20 the then increased amount from June 2018 until March 2019. The
21 February and March payments were returned to the Plaintiff after
22 having been made.
23

24 3.8 Ocwen obtained Relief from Stay on February 1, 2019.
25
26

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1 3.9 Plaintiff through her attorney contacted Ocwen and
2 attempted to set up a payment plan to bring current the alleged
3 delinquency. Even though Plaintiff was prepared to bring the
4 alleged delinquency current in six months or less, Ocwen refused
5 to negotiate either a payment plan or a loan modification.

6 3.10 Ocwen transferred the claim to its subsidiary PHH.
7 PHH has also refused to negotiate any type of repayment plan and
8 has commenced foreclosure proceedings with a sale date of
9 November 15, 2019.
10

11 3.11 Plaintiff's Brother, who has lived with the Plaintiff
12 for the last four years, is prepared to purchase the property
13 and pay off the loan to PHH in full. Or in the alternative the
14 Plaintiff is prepared to immediately pay an amount to PHH in
15 excess of twenty thousand dollars, bring the loan payment into
16 her Chapter 13 Plan and pay any remaining fees owing at the rate
17 of \$650 per month.
18

19 3.12 The Notice of Foreclosure shows an estimated
20 reinstatement amount of \$25,831. The Plaintiff in fact paid the
21 amounts requested by the Defendant up until the time they
22 refused to accept her payment. The reinstatement amount also
23 includes 'estimated fees and costs' including \$2529.70 in escrow
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1 advances despite Plaintiff having paid escrow fee up to the time
2 Ocwen refused her payment and an additional \$3583 in various
3 costs and fees. These fees are excessive.
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5 3.13 Plaintiff requested a payoff amount on the loan from
6 PHH in mid-October. Despite being told at least twice that the
7 payoff would be provided within days she did not receive the
8 payoff amount until October 31, 2019. Fees and costs set forth
9 in the payoff amount are \$2272 higher than the already excessive
10 fees set forth in the Notice of Foreclosure.
11

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13 IV. INJUNCTIVE RELIEF

14 4.1 Plaintiff reasserts the facts contained in Sections I
15 through III above.
16

17 4.2 Defendants have failed to comply with the Washington
18 State Deed of Trust Act.

19 4.3 Defendants have acted in bad faith and have
20 overcharged the Plaintiff both as to the monthly payments and in
21 excessive fees and cost making it impossible for the Plaintiff
22 to bring current the alleged arrears.
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24 4.4 Unless the Defendants are temporarily restrained from
25 going forward with the foreclosure currently scheduled for
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1 November 15, 2019, the Plaintiff and creditors of the Plaintiff
2 will suffer immediate, irreparable injury, loss or damage in
3 that the Plaintiff will lose her home, the equity there in, and
4 incur substantially increased housing expenses. The
5 administration of this case will be impaired.

7

8 V. DETERMINE THE AMOUNT OF THE DEFENDANTS' CLAIM

9 5.1 Plaintiff reasserts the facts contained in Sections I
10 through III above.

12 5.2 The Defendants acted in bad faith in cancelling the
13 Loan Modification previously granted to the Plaintiff and then
14 refusing to allow her an opportunity to bring current the
15 alleged default. The Defendants should be required to provide
16 an accounting of the alleged delinquency.

18 5.3 The fees of \$8385.95 set forth in The Notice of
19 Foreclosure estimated reinstatement are excessive and
20 unreasonable. The fees and costs set forth in the payoff
21 calculation received from PHH are higher and even more
22 excessive.

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1 VI. ALLOW DEBTOR TO CURE THE ALLEGED DEFAULT

2 6.1 Plaintiff reasserts the facts contained in Sections I
3 through III above.

4 6.2 The Plaintiff has attempted to meet the demands of the
5 Defendants. She has been stymied by the Defendants initially
6 neglecting to inform her of the alleged delinquency, which had
7 she been made aware of it at the time Defendants allege it
8 occurred, would have amounted to less than \$2000 and been easily
9 cured and then subsequently providing contradictory and
10 inconsistent information.

11 6.3 The Plaintiff is prepared to cure the arrears either
12 through the sale of the property or, if that is not approved, by
13 a large lump sum payment, adequate protection of the current
14 monthly payment through the Chapter 13 Trustee, and a
15 substantial monthly payment to cure any arrear remaining after
16 the lump sum payment.

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19 Wherefore, the Plaintiff asks for the court to enter an
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21 order:

22 1. Pursuant to Rule 65 of the Federal Rules of Civil
23 Procedure as incorporated by Federal Rule of Bankruptcy

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Procedure 7065, enter a temporary restraining order, restraining the defendants, their attorneys, agents, employees and successors from proceeding with the foreclosure sale currently set for November 15, 2019;

2. Further preliminarily and permanently enjoy the defendants, their attorneys, agents, employees and successors from proceeding with the foreclosure sale currently set for November 15, 2019;

3. Waive the requirement of bond for the Temporary Restraining Order and Preliminary Injunction;

4. Approve the Plaintiff's sale of the property or alternatively allow the Plaintiff to modify her Chapter 13 Plan to include the payments on the Note and Deed of Trust including any arrears thereon and reinstate the Automatic Stay on the Defendants; and

5. Determine the amount of the claim held by the Defendants.

Dated this 4th day of October, 2019

/s/ Joy Lee Barnhart
Joy Lee Barnhart, WSBA #12250
Attorney for the Plaintiff/Debtor

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1 VERIFICATION
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4 I am the Plaintiff/Debtor. I have read the foregoing
5 Complaint and believe the same to be true and correct to the
6 best of my knowledge.
7

8 Dated at Renton, Washington this 4th day of October, 2019.
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12 /s/ Jan Mathieson
13 Jan Mathieson, Plaintiff/Debtor
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1 ATTACHMENT A

2 Mr. Glen A Messina, CEO & President
3 OCWEN LOAN SERVICING, LLC
4 1661 WORTHINGTON ROAD, STE 100
WEST PALM BEACH, FL, 33409,

5 OCWEN LOAN SERVICING, LLC
c/o It's Registered Agent
6 CORPORATION SERVICE COMPANY
7 300 DESCHUTES WAY SW STE 304
TUMWATER, WA, 98501

9 PHH MORTGAGE CORPORATION
c/o It's Registered Agent
10 CORPORATION SERVICE COMPANY
300 DESCHUTES WAY SW STE 304
11 TUMWATER, WA, 98501

12 Mr. Glen A Messina, CEO
13 PHH MORTGAGE CORPORATION
14 1 MORTGAGE WAY
MOUNT LAUREL, NJ, 08054

16 Mr. Glen A Messina, CEO
PHH Corporation
17 3000 Leadenhall Road
Mount Laurel, NJ 08054

19 WESTERN PROGRESSIVE - WASHINGTON, INC.
1000 ABERNATHY RD #200
20 ATLANTA, GA, 30326,

21 WESTERN PROGRESSIVE - WASHINGTON, INC.
c/o It's Registered Agent
22 CORPORATION SERVICE COMPANY
300 DESCHUTES WAY SW STE 304
TUMWATER, WA, 98501

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